S.B.Civil Revision Petition No.368/2006

Jeet Mal.
vs.
LRs. of late Shri Karansingh and others.

Date : 24.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SS Bhati, for the petitioner.
None present for the respondents.

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Heard learned counsel for the petitioner as nobody appeared on behalf of the respondents despite service.

The present revision petition has been filed to challenge the order dated 22.2.2006 by which the trial court refused to dismiss the suit of the plaintiff as abated on account of death of the plaintiff.

According to learned counsel for the petitioner, the plaintiff/respondent filed suit for damages on account of malicious prosecution. According to the learned counsel for the petitioner/defendant, the cause was personal cause of the plaintiff and with the death of the plaintiff, the suit abated but the court below committed error of law in holding that the suit has not

abated and allowed the plaintiff's wife to become party in place of deceased plaintiff.

I considered the submissions of learned counsel for the petitioner and perused the impugned order.

It is settled law that the suit for damages of the nature can be pursued only by the aggrieved person and with the death of the plaintiff, the suit abates. The court below committed error of law by holding that the plaintiff's legal heir can continue with the suit.

In view of the above, the present revision petition is allowed, the order of the trial court dated 22.2.2006 is set aside and the suit of the plaintiff is dismissed as abated.

(PRAKASH TATIA), J.

S.Phophaliya